

**Extract from a Swedish letter to ECHA 12 May 2010 on the interpretation on how to apply the 0.1 % trigger limit of article 33 and 7(2)**

Justification

The position presented here is based on careful studies of both the legal text and the opinion 2007 of the Commissions' Legal Service<sup>1</sup> of how to apply the 0.1 % trigger limit of article 33 and 7(2), as well as discussions with those Member States that share our point of view.

*Based on these studies and discussions, our interpretation is that the 0.1 % trigger limit must be calculated as the average concentration of any object that has a shape, surface or design which entails compliance with the definition of an article in REACH (art. 3(3)). It does not make a difference whether or not such an article has been joined together with other articles to form a larger article.*

Please find below some observations that support this interpretation:

1. The Legal Service made a number of observations on the issue of how to apply the 0.1% trigger limit of Article 33 and 7(2). However, they did not address the difference between a "simple" and a "complex" article, but rather the difference between a "whole article" as opposed to "individual or homogeneous parts".
2. The obligations of article 7(2) and 33 refer to "article" without any further specification. The definition of an article in REACH is *an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition*. This definition means that any object which at a certain step in its life has become an article will normally remain an article until it eventually becomes waste after end use ("Once an article - Always an article"). An assembled article may comply with the definition of REACH article 3(3), while at the same time several parts or components of that same article may **also** comply with the definition of an article<sup>2</sup>.
3. The interpretation of ECHA's current draft article guidance is not in line with the legal text or with the advice from the Commissions' Legal Service, since none of these suggest that the act of joining two or more articles together to create a larger article would be sufficient to disqualify these smaller articles from being still themselves also articles. Moreover, in many cases the smaller articles may be disassembled from the larger article and sold separately for reuse. ECHA's interpretation in fact leads to a situation where articles would run "in and out and in

<sup>1</sup> The opinion of the Legal Service is reflected in the document CASG(SIA)/04/2007.

<sup>2</sup> An article can be both simple and complex (revised guidance page 14). However, many components of complex articles are in essence still also articles.

again” of article status. Examples are e.g. shoelaces, furniture with detachable legs, disassembled IKEA-furniture vs. the final assembled furniture, spare parts for cars and electronics, or e.g. a teddy bear with a t-shirt stitched loosely to the corpus.

4. We accept the observations of the Legal Service that there is no legal background for the application of the 0.1 % trigger limit specifically to “individual or homogenous parts of articles”. We also accept that such an interpretation would require a definition of the term “homogeneous part” within REACH. Thus, to clarify our view, we believe that the trigger limit should apply to such parts only in those cases where these parts comply with the definition of an article in Article 3(3) of REACH.
5. The Commissions’ Legal Service has stated that the trigger limit should apply to a “whole article”. The term “whole article” is not used in the legal text. However, numerous individual parts of many complex articles must be considered as “whole articles”. Thus the trigger limit should apply to such parts if they comply with the definition of an article following REACH article 3(3).
6. The Commissions Legal service has stated that the trigger limit should apply to an “article as produced or imported”<sup>3</sup>. We could agree to this wording, however only on the condition that smaller individual articles, from which a larger article has been produced or assembled, are also regarded as “articles as produced or imported”.

The interpretation presented here would lead to a larger flow of information on SVHC’s in the supply chain than would the current interpretation of the ECHA guidance. This would be to the benefit of human health and environment (REACH article 1(1)).

The interpretation would avoid a number of the detrimental consequences of the interpretation of the ECHA Guidance, as indicated by findings in the recent report from the Nordic Council of Ministers ([www.norden.org/en/publications/publications/2010-514?set\\_language=en](http://www.norden.org/en/publications/publications/2010-514?set_language=en)). It would also agree better with how EU has defined articles in other contexts where a calculation of chemical content is required.

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<sup>3</sup> The guidance also mentions “article as supplied” (section 4.3).

Practical examples on how this interpretation should be applied.

In the following some examples are given on how the interpretation presented here should be applied in practice. These examples are partly based on the case study work documented in a recent report on this issue from the Nordic Council of Ministers<sup>4</sup>.

The *hubcaps on a car* are individual articles. It does not matter whether a hubcap is supplied as a spare part or fitted onto a wheel or whether this wheel is fitted onto a car.

Also a *circuit board in a computer* would comply with the definition of an article. Thus, when determining obligations according to articles 7(2) and 33, the circuit board, -and maybe even smaller parts of the circuit board if these also comply with the article definition - must be considered separately from the rest of the computer.

Furthermore individual parts such as e.g. a *ribbon on a shoe* and the *ventilation net* under the armpit of a rain jacket would comply with the definition of an article.

However, a *polymer handle formed directly onto the metal part to form a screwdriver* in one process does not comply with the definition of an article, contrary to handles produced as separate articles and then attached to the metal part.

Neither does the *varnish on a table* comply with the article definition. Thus the trigger limit should be calculated as average over the table top including the varnish. The legs of the table though may be separate articles.

Final words

We believe ECHA should review the Guidance on requirements for substances in articles once again based on the considerations presented in this paper. We think that our interpretation is fully consistent with the current legal text as well as with the opinion of the Commissions' Legal Service and also in better agreement with the protection goal which the legislators had in mind. We are well aware that - given the complexity of the issue - there may be borderline cases which merit further elaboration in the guidance.

We consider that also implementing provisions according to Article 7(8) may be needed to clarify how article 3(3) can be applied to different cases.

Naturally, the dissenting countries should be committed to take part in any further discussions on specific adaptations, which may be necessary for certain product groups or any other difficult cases that may arise from this interpretation.

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<sup>4</sup> Nordic Council of Ministers, Jan. 2010: "*REACH Trigger for Information on Substances of Very High Concern (SVHC) – An Assessment of the 0.1 % Limit in Articles*".